

Message

From: Wetherington, Michele [Wetherington.Michele@epa.gov]
Sent: 9/3/2019 6:16:08 PM
To: Gordon, Lisa Perras [Gordon.Lisa-Perras@epa.gov]; Cooper, Jamal [cooper.jamal@epa.gov]
Subject: RE: 2 One Liners Needed GA Narrative

The state court case challenging a permit based on EPD's interpretation of the narrative before these revisions is docketed in the Georgia Supreme Court but no briefing or oral argument has been scheduled. If the GA Sup. Ct. affirms the Court of Appeals, a state court found that EPD interpreted its prior narrative appropriately. EPA still has the decision of whether the revision is a change to WQS and approvable. The analysis for disapproving is not affected. If the GA Sup. Ct. reverses the Court of Appeals, the opinion may address whether the state's interpretation of the prior narrative was appropriate. The Sup. Ct. could hold that EPD did not interpret its prior narrative appropriately and could not include a level of reasonableness in finding interference. EPA's disapproval as a substantive revision would be bolstered through reasoning that a level of reasonableness was therefore a substantive change. Any EPA approval as a non-substantive change would not be supported because the prior interpretation was not correct therefore clarifying it further would not be, too, however a state court does not control EPA's decision of the revision. To the extent EPA will determine the revision to be non-substantive, this Sup. Ct. decision would not support that but not prevent or affect EPA's authority for that.

EPA has a duty to review state-adopted WQS pursuant to 40 CFR 131.5 and the definitions in 40 CFR 131.3. EPA's guidance, *What Is a New or Revised Water Quality Standard Under CWA 303(c)(3)?*, states that EPA considers non-substantive edits to existing WQS to constitute new or revised WQS that EPA has the authority and duty to approve or disapprove under CWA section 303(c)(3). While such revisions do not substantively change the meaning or intent of the existing WQS, EPA believes that it is reasonable to treat such non-substantive changes in this manner to ensure public transparency as to which provisions are effective for purposes of the CWA.

There are probably typos, please edit.

Michele

From: Gordon, Lisa Perras <Gordon.Lisa-Perras@epa.gov>
Sent: Tuesday, September 3, 2019 11:11 AM
To: Wetherington, Michele <Wetherington.Michele@epa.gov>; Cooper, Jamal <cooper.jamal@epa.gov>
Subject: 2 One Liners Needed GA Narrative

Talking to Stacey this morning, she has requested two one-liners (or two to three liners) to address the following Sr. Mgr. and/or HQ questions:

1. Why doesn't the State Supreme Court decision matter?
2. Corey's new 'twist' is that the CWA only requires us to review changes to WQS that are based on science. I believe what he is saying is that we do not have a statutory duty to review non-substantive changes.

Michele, would you want to take a first crack at these? I know you have the info on-hand for the first, and as I recall, you also have info on the fact that we do need to review non-substantive changes, as well? Of course, this is 1. Substantive, and 2. Based on the science of what is unreasonable to protect uses, so I'm not sure why we have to address it, but we do.

Lisa Perras Gordon

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